AO 440 (Rev. 10/93) Summons in a Ci ction

United States District Court

WESTERN DISTRICT OF WASHINGTON

PAYTEL NORTHWEST, INC., et al.,

Plaintiffs,

V.

U S WEST COMMUNICATIONS, INC.,

Defendant.

SUMMONS IN A CIVIL CASE

CASE NUMBER C95-1622WC

FILED ENTERED
LODGED RECEIVED

OCT 23 1995

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

TO: (Name and address of defendant)

U S West Communications, Inc.
1600 7th Avenue
Seattle, WA 98191

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

R. Alan Wight
Brooks E. Harlow
James L. Phillips
Miller, Nash, Wiener, Hager & Carlsen
4400 Two Union Square
Seattle, WA 98101

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK

October 20, 1995

DATE

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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PAYTEL NORTHWEST, INC.; GLOBAL PAYTEL, INC., dba Global-Tel Payphones; PAYPHONE MANAGEMENT, INC., dba Digital Access Communications; NORTELCO, INC., dba Diversified Service Company; CENTRAL TELEPHONE, INC.; JOHN S. FLETCHER and CAROL FLETCHER, a marital community; TELAD INTERNATIONAL, INC.; TELCO WEST, INC., dba Telco Northwest, Inc.; ALPHA TELCOM, INC.; TIGER INDUSTRIAL ENGINEERING, INC., dba Pacific Northwest Payphone; and INTELLI-COM, INC., dba U S Intella-West, Inc. Plaintiffs, v. U S WEST COMMUNICATIONS, INC., Defendant.	Civil No. C95-1622 COMPLAINT FOR INJUNCTION AND DAMAGES FOR VIOLATION OF SHERMAN ACT (15 U.S.C. §§ 1 AND 2) AND PENDENT STATE LAW CLAIMS DEMAND FOR JURY TRIAL

Jurisdiction and Venue

1. This is an action under federal and state antitrust laws to recover money damages resulting from practices

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designed and implemented by defendant to preserve, extend, and enhance defendant's monopsony over pay telephone locations and to enjoin defendant's practices of maintaining a "price squeeze" over costs of essential services. The complaint is brought under Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2), Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15(a) and 26), and the antitrust laws and common law of the states of Oregon and Washington. This court has subject-matter jurisdiction over the federal antitrust claims, pursuant to 15 U.S.C. §§ 15 and 26 and 28 U.S.C. §§ 1331, 1337, and 2201. This court has supplemental jurisdiction over the claims asserted under state law, pursuant to 28 U.S.C. § 1367.

2. Defendant, U S WEST Communications, Inc. ("U S WEST"), is found and transacts business in the Western District of Washington. Venue is proper in this district, pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22.

Parties

3. Plaintiffs are owners and operators of pay telephone equipment and are lessees of installation sites for that equipment. Plaintiffs lease telephone sites in Washington, Oregon, and other states. In order to carry on their businesses, plaintiffs must purchase certain essential services and facilities from U S WEST, including access lines, switching, and mechanisms for billing and for fraud detection.

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a. Plaintiff Paytel Northwest, Inc., is a corporation organized and existing under the laws of the state of Washington and having its principal place of business in Seattle, Washington.

b. Plaintiff Global PayTel, Inc., is a corporation organized and existing under the laws of the state of Washington and having its principal place of business in Auburn, Washington, where it transacts business under the name of Global-Tel Payphones.

c. Plaintiff Payphone Management, Inc., is a corporation organized and existing under the laws of the state of Washington and having its principal place of business in Tukwila, Washington, where it transacts business under the name of Digital Access Communications. Payphone Management, Inc., is the assignee of claims of California Phones Ltd., California Phones Limited 0, California Phones Limited 1, California Phones Limited 2, California Phones Limited 3, California Phones Limited 4, California Phones Limited 5, California Phones Limited 6, California Phones Limited 7, California Phones Limited 8, California Phones Limited 9, California Phones Limited 10, California Phones Limited 11, California Phones Limited 12, California Phones Limited 14, Debbie Truman, and Ken Cheatam.

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d. Plaintiff Nortelco, Inc. ("Nortelco"), is a corporation organized and existing under the laws of the state of Washington and having its principal place of business in Spokane, Washington, where it transacts business under the name of Diversified Service Company. Nortelco is the assignee of claims of Mike T. Kennedy and Betty Kennedy, husband and wife, who owned and operated the unincorporated pay telephone business known as Diversified Service Company between January 1989 and December 1991.

e. Plaintiff Central Telephone, Inc., is a corporation organized and existing under the laws of the state of Washington and having its principal place of business in Goldendale, Washington.

f. At all material times, plaintiffs John S. Fletcher and Carol Fletcher ("Fletcher") were husband and wife and as such comprised a marital community under the laws of the state of Washington. Plaintiffs Fletcher were the sole shareholders of Public Communications of America, Inc. ("PCA"), a corporation organized and existing under the laws of the state of Washington and having its principal office in Kirkland, Washington, where it transacted business through 1994, when it was dissolved. Plaintiffs

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Fletcher are the holders of PCA's claims against defendant.

g. Plaintiff Telad International, Inc., is a corporation organized and existing under the laws of the state of Oregon and having its principal place of business in Portland, Oregon.

h. Plaintiff Telco West, Inc., is a corporation organized and existing under the laws of the state of Oregon and having its principal place of business in Lake Oswego, Oregon, where it transacts business under the name Telco Northwest, Inc.

i. Plaintiff Alpha Telcom, Inc., is a corporation organized and existing under the laws of the state of Oregon and having its principal place of business in Grants Pass, Oregon.

j. Tiger Industrial Engineering, Inc., is a corporation organized and existing under the laws of the state of Oregon and having its principal office in Portland, Oregon, where it transacts business under the name Pacific Northwest Payphone.

k. Intelli-Com, Inc., is a corporation organized and existing under the laws of the state of Oregon and having its principal office in Portland, Oregon, where it transacts business under the name U S Intella-West, Inc.

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4. Any references to "plaintiffs" include any affiliates, companies, or businesses acquired by any plaintiff that engage in the pay telephone business in U S WEST's service area.

5. U S WEST is a corporation organized and existing under the laws of the state of Colorado and having its principal place of business in Denver, Colorado.

6. Any references to U S WEST include any predecessors, successors, parents, subsidiaries, affiliates, and divisions of U S WEST, as the context requires.

Definitions of Relevant Terms

7. The term "pay telephone" refers to any telephone instrument capable of accepting payment by coin, paper currency, or credit card (a) that is provided for the use of members of the public other than the location provider and (b) that is not owned by the location provider.

8. The term "LEC" is an acronym for Local Exchange Company, meaning a company that provides local exchange telephone service within a specified geographic service area.

9. The term "LATA" is an acronym for Local Access and Transport Area. A LATA is a geographic area within which a LEC is legally permitted to originate and complete telephone calls without assistance from an interexchange (i.e., long distance) carrier. A LEC owned by a Regional Bell Operating Company (such

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as U S WEST) is generally not permitted to transmit telephone calls across LATA boundaries.

10. The term "IntraLATA" refers to a telephone call that originates and terminates within a LATA. An IntraLATA call can include a local or toll call within a LATA.

11. The term "InterLATA" refers to a telephone call that is carried across LATA boundaries and includes international calls.

12. The term "service area" refers to those areas in which a particular carrier serves as the LEC. The references to "service area of U S WEST" are to U S WEST or to the conduct of U S WEST within the area of the states of Washington, Oregon, and adjoining states in which U S WEST serves as the LEC.

13. The term "location provider," "site owner," or "premise owner" refers to a public or private owner or lessee of a site that arranges or contracts with a pay telephone provider for the installation and operation of one or more pay telephones at its location or locations.

14. The term "local exchange facilities" refers to those facilities used by the LEC in its service area to perform any activity or function in connection with the origination, transmission, switching, routing, or termination of an IntraLATA call.

15. The term "exchange access facilities" refers to facilities used by the LEC in its service area to perform any

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activity or function in connection with the origination, transmission, switching, routing, or termination of calls between the LEC and interexchange carriers.

16. The term "ubiquitous public switched local exchange and exchange access facilities" refers to the facilities described in paragraphs 14 and 15 above and includes the switches, lines, and appurtenant facilities that enable communications to flow within, into, or out of the LEC's service area in the states of Washington and Oregon. These facilities include (but are not limited to) facilities known in the pay telephone industry as dial-tone functionality, coin lines, coin-line functionalities (e.g., central office-driven answer supervision, blocking and screening, rating of toll calls, and other functions and features), wires, switches, transmission facilities, and other central office facilities and services used to provide pay telephone service. The use of the facilities described in paragraphs 14-16 hereof is essential to plaintiffs' businesses. These essential facilities cannot be practically or economically duplicated, and at times, competitors were prevented from duplicating those facilities as a matter of law. U S WEST has a monopoly in the ownership and provision of those facilities.

17. The term "telecommunications services" refers to the offering for hire of the essential telecommunication

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facilities or of telecommunications by means of the essential facilities.

General Allegations

18. American Telephone & Telegraph Company ("AT&T"), through its ownership of the former Bell Operating Companies ("BOCs"), had a monopoly on the provision of IntraLATA and InterLATA telecommunications services furnished to the customers of the BOCs. As a result of litigation commenced by the United States, a modified final judgment ("MFJ") was entered effective January 1, 1984, directing AT&T to divest itself of its ownership of the BOCs (United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983). The BOCs thereafter became owned by Regional Holding Companies ("RHCs") and were known as Regional Bell Operating Companies ("RBOCs"). Defendant U S WEST is one of those RBOCs. Generally, after divestiture, the RHCs, through RBOCs (which serve specific geographic areas), retained monopolies on essential facilities for the transmission of local calls (i.e., local exchange facilities) and for access to interexchange carriers (such as AT&T and MCI) for the origination and termination of toll calls (i.e., exchange access facilities). U S WEST is in the business of providing telecommunications services as the LEC monopolist in many geographic areas in 14 states, including Washington and Oregon.

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19. The MFJ mandated the breakup of the old Bell Telephone system and facilitated the development of competition in the long distance telephone market. Under its terms, the former service area of the Bell System was divided into small regions, or LATAs. The RBOCs were prohibited from providing telephone service between LATAs. Such InterLATA service was to be provided by AT&T and its competitors (such as MCI and Sprint). United States v. Western Elec. Co., 569 F. Supp. 990, 993-94 (D.D.C. 1993).

20. Although the MFJ was intended to develop a competitive environment for InterLATA telephone service, the appropriate level of IntraLATA competition was left to the determination of state legislatures and regulatory agencies. The states of Washington and Oregon quickly approved IntraLATA long distance competition. Washington and Oregon deregulated certain aspects of the telecommunications business and introduced competition as a substitute.

21. In the mid-1980s, U S WEST introduced "public access line" ("PAL") service, by which owners of coin-operated telephones could connect those telephones to the telephone network.

22. As the LEC monopolist in its service area, U S WEST has continued a monopoly on, and owns and controls, the ubiquitous public switched local exchange and exchange access facilities in its service area. As a result, substantially all

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IntraLATA and InterLATA telephone calls in U S WEST's service area are transmitted or handled by U S WEST, using its ubiquitous public switched local exchange and exchange access facilities.

23. U S WEST's ubiquitous public switched local exchange and exchange access facilities are essential facilities to the provision of pay telephone services by U S WEST and by competing pay telephone providers, including plaintiffs. These essential facilities are vital to transmitting an IntraLATA or InterLATA pay telephone call and to the competitive viability of competitive pay telephone providers. As described below, U S WEST formulated and implemented a plan to deny plaintiffs access to its essential facilities or to provide access to competing pay telephone providers only on an unreasonable or discriminatory basis.

24. U S WEST operates at two levels of the telecommunications industry: (a) as purchaser of goods and services and (b) as seller of other goods and services.

25. U S WEST has been a monopolist in the product or service market of providing pay telephone service for callers in its service area. U S WEST has also been a monopsonist in obtaining sites or locations for the installation and operation of pay telephones. The locations are obtained from location providers by negotiating for and entering into location agreements in exchange for commissions paid to the location providers. Obtaining installation locations enables a

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telecommunications provider to compete for customers who use pay telephones. Plaintiffs therefore must compete with U S WEST in obtaining pay telephone locations in order to also compete against U S WEST in the pay telephone business. U S WEST intended to use and has used its monopsonist power in obtaining pay telephone locations to maintain and enhance its monopoly in the market for provision of pay telephone services.

26. The owners of pay telephones generate revenues through the installation and operation of those pay telephones. Pay telephone owners typically enter into written contracts with location owners that give the pay telephone owners the right to install and operate one or more pay telephones on the location provider's premises in exchange for the payment of commissions to the location provider. The commissions usually take the form of a specified percentage of the revenues generated by the pay telephones. Pay telephone providers compete for the contractual rights to a location at which to install and operate pay telephones, and that competition largely revolves around price competition (i.e., commission rates).

27. At the time of AT&T's divestiture of its ownership of the BOCs, U S WEST controlled almost 100 percent of the pay telephone sites and the pay telephone market in its service area. Competitive owners of pay telephones were able to enter the market only after the advent of new technology and the issuance of a regulatory order by the Federal Communications

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Commission ("FCC") authorizing the connection of non-LEC pay telephones to the switched network. Plaintiffs entered the pay telephone market in about 1986 and now compete with U S WEST in the installation and operation of pay telephones in U S WEST's service area.

28. After the opening of the pay telephone market to competition, plaintiffs attempted to make inroads into the market by offering location providers higher commissions than the commissions that had previously been offered by U S WEST. In order to prevent erosion of its monopsony share of the pay telephone market within its service area, U S WEST adopted and embarked on a plan to slow the emergence of competition and maintain its monopoly status in the pay telephone business. U S WEST's plan was made possible because of its unique status as the LEC monopolist and the provider of essential facilities to the pay telephone business of its competitors and because of its monopoly share of the pay telephone market in its service area.

Anticompetitive Acts of U S WEST

29. At the time of AT&T's divestiture of its ownership of the BOCs, U S WEST controlled almost 100 percent of the relevant product market in the relevant geographic area. The relevant product market is the market for the installation and operation of pay telephones on the premises of location providers. The relevant geographic market is U S WEST's service area within the states of Washington and Oregon.

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30. After issuance of a regulatory order by the FCC authorizing the connection of non-LEC pay telephones to the public switched network, coupled with the advent of new technology that had been needed because U S WEST refused to provide coin lines, plaintiffs competed with U S WEST along with other independent pay telephone providers in seeking opportunities to install and operate pay telephones in U S WEST's service area.

31. In order to obtain installation locations, plaintiffs offered location providers higher commissions than had been offered by U S WEST before deregulation. As plaintiffs began to obtain pay telephone locations, U S WEST adopted and embarked on a course of action to slow the emergence of competition and to repress and eliminate competition so as to retain its de facto monopoly status in the pay telephone business.

32. U S WEST realized that it retained full discretion in the placement of its pay telephones, the content of its advertising, and the level of commissions it paid to location owners. U S WEST therefore pursued a strategy of eliminating competition through cross-subsidization and unfair business activities designed and intended to retain and increase its share of pay telephone sites by doing, among other things, the following:

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a. Greatly increasing the level of commissions it paid to location owners.

b. Disseminating false and misleading information to site owners and to the consuming public about the costs and level of service on privately owned pay telephones.

c. Discriminating in the provision of telecommunications services.

d. Interfering with contracts between plaintiffs and pay telephone location providers.

e. Refusing to pay compensation to plaintiffs for IntraLATA operator services originating at plaintiffs' pay telephones.

f. Discriminating against plaintiffs in its billing and collection charges.

33. As U S WEST's plan was implemented, plaintiffs and other privately owned pay telephone providers could not obtain profits sufficient to compete with U S WEST. U S WEST was able to pay higher commissions by using profits generated in other aspects of its business. Private pay telephone owners, on the other hand, were limited in the amount of commission they could offer to location owners by the revenues actually generated from the pay telephone business. In an effort to stay in competition, private pay telephone owners had to make other charges to consumers of telephone services. U S WEST thereafter focused

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its advertising and sales strategy on charges the private pay telephone owners had to make to support commissions, while concealing the fact that U S WEST was able to pay higher commissions only through cross-subsidization. U S WEST's statements to pay telephone location owners and to consumers of telecommunications services unfairly portrayed private pay telephone owners as greedy and as providing inadequate services and equipment, even though U S WEST itself was responsible for refusing to provide essential services to private pay telephone owners.

34. The essential facilities that U S WEST refused to provide to plaintiffs, but provided to its own system of pay telephone operations, included the following:

a. <u>Coin Lines and Coin-Line Functionalities</u>.

i. Among the essential facilities that U S WEST owns and controls as the LEC monopolist in its service area are coin lines and coin-line functionalities used by U S WEST's pay telephones. The coin lines are connected to central office equipment programmed to provide answer supervision and to block completion of calls made from U S WEST's pay telephones unless the central office equipment detects that the U S WEST pay telephone has received the correct payment through the deposit of coins. U S WEST refused to provide coin lines and coin-line

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functionalities to plaintiffs and instead provided plaintiffs with access only to PALs, a type of service that is essentially the same as the lines installed at any business location.

ii. U S WEST charged more for PALs than for business lines, even though the functions were the same.

iii. U S WEST could feasibly have provided plaintiffs with access to or the use of coin lines and coin-line functionalities, but it has refused to do so. As a result, plaintiffs were forced to invest in technologically complex "smart" pay telephones, which are more expensive yet inadequate substitutes for access to coin lines and coin-line functionalities. Plaintiffs cannot practically or reasonably duplicate U S WEST's essential facilities.

b. Operator Services.

U S WEST, as the LEC monopolist in its service area, has market power over operator services. U S WEST has denied operator service commission payments to plaintiffs and has imposed different and more expensive cost structures on them than on its own pay phone services.

c. Validation, Billing, and Collection Services.

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i. Among the essential services U S WEST owns, controls, or has power over as the LEC monopolist in its service area are validation, billing, and collection services. Validation services consist of services to validate credit card numbers and telephone numbers to which a telephone call is to be charged. The billing and collection services are services to bill for and collect on telephone calls actually completed.

ii. U S WEST charges different rates to different customers for billing and collection services. U S WEST charges other customers and itself less for certain services than it charges plaintiffs for the same services.

d. Refusal to Supply Access Lines.

On various occasions, U S WEST has refused to provide access lines to plaintiffs or has provided access lines only after unreasonable delays in order to prevent plaintiffs from installing pay telephones at locations already served by U S WEST's pay telephones. If one of plaintiffs' telephones is already serving a location, however, U S WEST does not delay installation of lines to its own pay telephones.

35. In order to increase the operational costs incurred by plaintiffs and diminish plaintiffs' ability to

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compete with U S WEST for location providers, U S WEST withheld essential telecommunications services from plaintiffs. U S WEST then charged itself less for those services than it charged plaintiffs for the essential telecommunications services it did provide to plaintiffs. If U S WEST had paid the same rates for the essential telecommunications services that plaintiffs were required to pay, U S WEST's costs would have exceeded the rates it charged to consumers who used U S WEST pay telephones. Thus, U S WEST has used its continued control over essential telecommunications services to create a "price squeeze" on plaintiffs. U S WEST has been able to do this because it can, and does, cross-subsidize its pay telephone services with revenues it earns in other lines of business in which U S WEST also has monopoly power.

Utility Commission Rulings

36. On February 7, 1992, the Northwest Payphone Association ("NWPPA") and four of its members (Digital Access Communications Corp., NCS Telework Communications Co., Paytel Northwest, Inc., and Public Communications of America) filed a complaint against U S WEST with the Washington Utilities and Transportation Commission (the "Commission"), alleging that the charges, rules, regulations, and practices of U S WEST regarding the pay telephone services of non-local exchange company providers were unreasonable, discriminatory, illegal, and unfair under laws applicable to public service companies (RCW Title 80). The

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Commission held hearings and issued an order dated March 7, 1995, in which it made the following rulings:

> The complainants allege that U S WEST is acting in an anticompetitive manner by creating a price squeeze and by discriminating between the services it provides for competitive payphone providers and the services it provides for its own payphone operations. . . . A price squeeze is defined by the NWPPA as the equivalent of selling below cost.

Northwest Payphone Ass'n v. U S WEST Communications, Inc., WUTC Docket No. UT-920174, Order Granting Compl. at 7 (Mar. 17, 1995) ("Order").

> The Commission believes the complainants have substantiated their allegation that they are subject to a price squeeze in the public payphone market.

Order at 14.

> The NWPPA also alleges that U S WEST discriminates between the services it provides [competitive payphone providers] and those it provides its own payphone operations. This includes differences in how quickly public access lines are provisioned, access to customer proprietary network information, and the actual services provided CPPs compared to those which serve U S WEST payphones.
>
> . . . By not providing Coin Line service, a service U S WEST provides itself, U S WEST forces the CPPs to incur additional capital investment. . . .
>
> . . .
>
> . . . By not providing a similar service to competitive payphone providers, U S WEST has granted itself undue preference or advantage in the public payphone market. The company's unwillingness to offer these services forces CPPs to invest in more expensive "smart" payphones.
>
> . . .
>
> In order to limit U S WEST's ability to discriminate between the network services it provides

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> itself and those it provides competitors, the Commission orders U S WEST to respond in writing to all legitimate requests for those network services from competitive payphone providers within 120 days.

(Footnote omitted.) Order at 17-19. On June 30, 1995, the Commission reaffirmed the order on reconsideration. U S WEST is collaterally estopped from contesting in this case the Commission's findings of fact and conclusions of law under Washington's public utility statutes.

37. U S WEST has sought to avoid the impact of the Commission's order by (a) substantially raising the commission rates it offers to location providers and (b) installing more expensive and sophisticated-appearing new pay telephone sets. The costs of these higher commissions and more expensive telephone sets are subsidized by U S WEST's other business activities and not earned from its pay telephone business.

38. U S WEST is not regulated with respect to the placement of its pay telephones, the content of its advertising, the level of commissions it pays to location owners, the type of pay telephones it installs for use by the consumer, operator service commissions, or intrastate billing and collection rates.

FIRST CLAIM FOR RELIEF

Monopolization (15 U.S.C. § 2)

39. Plaintiffs incorporate by reference all the allegations in paragraphs 1 through 38 above.

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40. U S WEST has monopoly power in the relevant market for installation and operation of pay telephones on the premises of location providers (U S WEST's monopoly is more accurately described as a monopsony because U S WEST is monopolizing the buying side of the market rather than the selling side).

41. There is a dangerous probability that U S WEST will succeed in recapturing its former monopoly market share of pay telephone installation locations by erecting significant barriers to entry in the market, by refusing to provide essential services, by forcing plaintiffs to absorb significant losses from preventable telephone service theft, and by using its monopoly profits in its other lines of business to provide funds to bid up the amount of commissions that will be paid to the site owner. In addition, U S WEST spreads false and misleading information about plaintiffs to pay telephone location providers and potential providers in order to win away existing sites or lock up future sites and in order to exclude plaintiffs from the highly desirable and lucrative sites (such as airports, luxury hotels, food chain stores, and large commercial buildings).

42. There is a dangerous probability that U S WEST will succeed in also recapturing its former monopoly in the pay telephone service market as a result of U S WEST's exercise of monopsony powers in the supply market for locations for pay telephones. Regaining this monopoly will have an adverse effect on consumers of pay telephone services because it will lessen the

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availability of pay telephone services. As a monopsonist buyer, U S WEST can reduce the purchase price on pay telephone locations after eliminating plaintiffs as competitors. Because a monopsonist ordinarily reduces its buying price by purchasing less, a monopsonist sells less to its own customers; because U S WEST has market power in selling pay telephone services, the reduction in output will mean reduced availability of service.

43. U S WEST's conduct has been carried on with the purpose of excluding plaintiffs from the relevant market and placing itself in the position of being the sole provider of pay telephone services.

44. U S WEST's unlawful conduct is continuing and threatens continuing loss and damage to plaintiffs. Unless U S WEST is enjoined by this court, plaintiffs will suffer irreparable injury and the market for pay telephone services will be deprived of competition.

45. U S WEST's actions constitute a violation of Section 2 of the Sherman Act (15 U.S.C. § 2). U S WEST's actions have had an adverse impact on plaintiffs and on the market for pay telephone services. Plaintiffs have been and will be damaged monetarily by being deprived of the opportunity to compete in the market for delivery of pay telephone services. Plaintiffs' damages will be ascertained at trial, and plaintiffs request that the damages be trebled, pursuant to the provisions of 15 U.S.C. § 2.

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SECOND CLAIM FOR RELIEF

<u>Prevention of Access to Essential Facilities in Violation of 15 U.S.C. § 2</u>

46. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 45 above.

47. U S WEST controls facilities that are essential to a business entity that intends to provide pay telephone services to consumers (such as dial tone, coin lines, repair services, installation services, and operator services).

48. U S WEST's refusal to provide plaintiffs with access to these essential facilities and to do so on the same terms and conditions as U S WEST enjoys for its own activities effectively constitutes a removal of the essential facilities from plaintiffs.

49. Control of the essential facilities carries with it the power to eliminate competition in the market for delivery of pay telephone services. U S WEST's ability to eliminate competition is permanent or relatively permanent because of the inability of any enterprise to duplicate the essential facilities.

50. Consumers are harmed by U S WEST's refusal to provide access to the essential facilities because competition has been harmed and will be eliminated. As a direct result of elimination of competition, consumers will face diminished access to pay telephone services.

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